

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
Fairfield Sentry Limited, et al.,)	Chapter 15 Case
Debtors in Foreign Proceedings.)	Case No. 10-13164 (SMB)
Fairfield Sentry Limited, et al.,)	Jointly Administered
(In Liquidation), acting by and through)	
The Foreign Representatives thereof,)	
Plaintiffs,)	
)	
- against -)	Adv. Pro. No. 10-03496 (SMB)
)	
Theodoor CGC Amsterdam, et al.,)	Administratively Consolidated
Defendants.)	
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This declaration is submitted in the following)	
Adversary Proceedings:)	
)	
10-03519)	
10-03635)	
10-03636)	
)	

**ATTORNEY DECLARATION OF JASCHA D. PREUSS
ON BEHALF OF THE LIECHTENSTEIN DEFENDANTS
IN SUPPORT OF THE DEFENDANTS' RENEWED MOTION TO DISMISS**

I, Jascha D. Preuss, declare under penalty of perjury that the following is true and correct:

1. I am duly licensed and admitted to practice law in the State of New York and in this court, and I am a partner with the law firm of Wuersch & Gering LLP. I represent defendant Liechtensteinische Landesbank AG (sued as Liechtensteinische LB Reinvest AMS) in Adverse Proceedings No. 10-03635 and 10-03636.

2. I respectfully submit this declaration in further support of Defendants' Renewed Motion to Dismiss (Dkt. 2902¹) and on behalf of each of the following Defendants, with the approval of their respective counsel:

- a. LGT Bank in Liechtenstein AG (now known as "LGT Bank AG"), Defendant in Adv. Pro. 10-03635 and Adv. Pro. 10-03636;
 - b. Liechtensteinische Landesbank AG (hereinafter "Landesbank"), Defendant in Adv. Pro. 10-03635 and Adv. Pro. 10-03636;
 - c. Neue Bank AG (Adv. Pro. 10-03519);
 - d. Verwaltungs- und Privatbank AG (now known as "VP Bank AG"); Defendant in Adv. Pro. 10-03635 and Adv. Pro. 10-03636; and
 - e. Centrum Bank AG (now part of VP Bank AG); Defendant in Adv. Pro. 10-03635; Adv. Pro. 10-03636;
- (all of the aforementioned, collectively, the "Liechtenstein Banks").

3. The purpose of this declaration is to put before the Court evidence of which the Court may take judicial notice that each of the Liechtenstein Banks is a "Financial Institution" as defined in 28 U.S.C. Section 101(22), and as such a "Covered Entity" as defined in the Consolidated Memorandum of Law in Support of Defendant's Motion to Dismiss (Dkt. 2903, *see id.*, at 3) for purposes of Defendants' argument that 28 U.S.C. Section 546(e) bars Plaintiffs' claims (*see id.* at 24-28) including against the Liechtenstein Banks.

4. As set out in more detail below, first I provide a copy of a list maintained on the website of Financial Market Authority of Liechtenstein ("FMA"), the independent, integrated

¹ Unless otherwise noted, all citations in this declaration to "(Dkt. __)" refer to the docket entry by that number in the consolidated adversary proceeding captioned: *Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam*, Adv. Pro. No. 10-03496 (SMB) (Bankr. S.D.N.Y.).

financial market supervisory authority of the Principality of Liechtenstein, showing that all the Liechtenstein Banks are currently licensed banks (Centrum Bank AG is not listed separately because it was merged into VP Bank AG in 2015; see below at ¶¶13-15).

5. After that, I provide evidence of the bank status of each of the Liechtenstein Banks including the following:

- a. **True and correct copies of certified excerpts of the Commercial Register of Liechtenstein (the “Commercial Register”)** for each of the Liechtenstein banks, as further detailed below at ¶¶7, 9, 11, 13, and 14. Certified translations of these excerpts are also provided. The Liechtenstein Commercial Register is maintained by the Office of Justice, Commercial Register Division, of the Liechtenstein National Administration (*Landesverwaltung*). It contains evidence of certain basic facts about each entity established pursuant to Liechtenstein law, including, *inter alia*, an entity’s purpose. This evidence is presumed to be accurate and conclusive and the Commercial Register can be relied upon by third parties.² A certified excerpt from the Commercial Register for any entity established pursuant to Liechtenstein law can be downloaded, or a hardcopy can be ordered, using the procedures established at the following URL: <https://www.oera.li/cr-portal/suche/suche.xhtml> (in German) (last visited on March 16, 2020).
- b. **Letters of confirmation of the Financial Market Authority of Liechtenstein (each, a “FMA Confirmation”)** with respect to each of the Liechtenstein Banks,

² Office of Justice (*Amt für Justiz*), official website at <https://www.llv.li/inhalt/1410/amtsstellen/information-in-english> (last visited on March 16, 2020) (“The Commercial Register Division is a register, which is open to public and constitutes conclusive evidence. Primarily it serves the legal certainty of commercial intercourse by publication of business under private law, particularly in regard of contingency and agency relationship of physical and legal persons acting in this sector.”)

as further detailed below at ¶¶10, 7, 15, and 12. The FMA Confirmations are official statements from the Liechtenstein financial markets regulator confirming that each of the Liechtenstein Banks was a licensed financial institutions during the applicable time and remains so (with regard to Centrum Bank AG, as part of VP Bank AG).

Licensed Banks List

All Liechtenstein Banks (Adv. Pro. 10-03519, 10-03635, and 10-03636):

6. Attached to this declaration as **Exhibit A** is the current official government list of licensed banks in Liechtenstein (*Licensed credit institutions in Liechtenstein*, hereinafter “Licensed Banks List”) dated as of February 28, 2020. The Licensed Bank List is kept and published by the FMA, the independent, integrated financial market supervisory authority of the Principality of Liechtenstein. A description of the FMA’s licensing and supervisory authority can be found at the following URL: <https://www.fma-li.li/en/financial-centre/licences-and-authorizations.html> (in English, last visited on March 16, 2020). The Licensed Bank List is available for download (in English) at the following URL: <http://register.fma-li.li/index.php?id=140> (via hyperlink under the heading ‘Licensed credit institutions in Liechtenstein’) (last visited on March 16, 2020).

1. Each of the following Liechtenstein Banks is listed on the Licensed Bank List as a credit institution in possession of a license according to Art. 15 Law of 21 October 1992 on Banks and Investment Firms (“Banking Act”):

- LGT Bank AG (#7);
- Landesbank (#8);
- Neue Bank (#9); and

- VP Bank AG (#14).
- Centrum Bank does not appear separately because it was acquired by and merged into VP Bank AG in 2015. See below at ¶14 *et seq.*

Commercial Register Excerpts and FMA Confirmations

LGT Bank AG (Adv. Pro. 10-03635 and 10-03636)

7. Attached hereto as **Exhibit B1** is a true and correct copy of the relevant pages of a certified excerpt from the Commercial Register for LGT Bank AG (formerly known as LGT Bank in Liechtenstein AG), dated February 22, 2020, preceded by a certified English translation of the same, providing conclusive evidence under Liechtenstein law that LGT Bank AG was registered in the Commercial Register on December 7, 1990 (Exhibit B1 at 1, under heading ‘Registration’), and that the purpose of LGT Bank AG is “to conduct all types of banking transactions for its own account and for the account of third parties domestically and abroad.” (*Id.* at 1, under heading ‘Purpose’.)

8. Attached hereto as **Exhibit B2** is a true and correct copy of an FMA Confirmation, dated February 13, 2020, confirming that LGT Bank AG is and at all times between January 1, 2004, and December 31, 2009, was “authorized to provide all banking services as set out in art. 3 para. 3 Banking Act and its articles of association.” (Exhibit B2 at 1.)

Liechtensteinische Landesbank AG (Adv. Pro. 10-03635 and 10-03636)

9. Attached hereto as **Exhibit C1** is a true and correct copy of the relevant pages of a certified excerpt from the Commercial Register for Landesbank, dated October 17, 2019, preceded by a certified English translation of the same, providing conclusive evidence under Liechtenstein law that Landesbank was registered in the Commercial Register on August 3, 1926 (Exhibit C1 at 1, under heading ‘Registration’), and that the purpose of Landesbank is to: “[i]n

the sense of a universal bank, ... conduct[] banking transactions of all kinds for its own account and for the account of third parties domestically and abroad.” (*Id.* at 1, under heading ‘Purpose’.)

10. Attached hereto as **Exhibit C2** is a true and correct copy of an FMA Confirmation dated February 13, 2020, confirming that Landesbank is and at all times between January 1, 2004 and December 31, 2009, was “authorized to provide all banking services as set out in art. 3 para. 3 Banking Act and its articles of association.” (Exhibit C2 at 1.)

Neue Bank AG (Adv. Pro. 10-3519)

11. Attached hereto as **Exhibit D1** is a true and correct copy of the relevant pages of a certified excerpt from the Commercial Register for Neue Bank AG, dated January 20, 2020, preceded by a certified English translation of the same, providing conclusive evidence under Liechtenstein law that Neue Bank AG was registered in the Commercial Register on April 2, 1992 (Exhibit D1 at 1, under heading ‘Registration’), and that the purpose of Neue Bank AG is “the operation of all types of banking transactions domestically and abroad.” (*Id.* at 1, under heading ‘Purpose’.)

12. Attached hereto as **Exhibit D2** is a true and correct copy of an FMA Confirmation, dated February 13, 2020, confirming that Neue Bank AG is and at all times between January 1, 2004 and December 31, 2010, was “authorized to provide all banking services as set out in art. 3 para. 3 Banking Act and its articles of association.” (Exhibit D2 at 1.)

VP Bank AG and Centrum Bank (Adv. Pro. 10-03635 and 10-03636)

13. Attached hereto as **Exhibit E1** is a true and correct copy of the relevant pages of a certified excerpt from the Commercial Register for VP Bank AG (formerly known as Verwaltungs- und Privatbank AG), dated January 20, 2020, preceded by a certified English translation of the same, providing conclusive evidence under Liechtenstein law that VP Bank AG

was registered in the Commercial Register on April 4, 1956 (Exhibit E1 at 1, under heading ‘Registration’), that VP Bank AG’s purpose is “is to operate a bank”, and that “[i]t may conduct all types of banking, financial, commercial and real estate transactions and services associated with a universal bank domestically and abroad.” (*Id.* at 1, under heading ‘Purpose’.) The Commercial Register excerpt further confirms that “based on the merger plan of 03/03/2015” [VP Bank AG] assume[d] ‘Centrum Bank AG’ ... by way of merger as of May 1, 2015. All assets and liabilities of the transferring company were transferred to the acquiring company by universal succession in accordance with the balance sheet as per 12/31/2014. The transferring company has ceased to exist.” (*Id.* at 2, under heading ‘Specific circumstances’.)

14. Attached hereto as **Exhibit E2** is a true and correct copy of the relevant pages of a certified excerpt from the Commercial Register for Centrum Bank AG, dated January 20, 2020, preceded by a certified English translation of the same, providing conclusive evidence under Liechtenstein law that Centrum Bank AG was registered in the Commercial Register on March 1, 1993 (Exhibit E2 at 1, under heading ‘Registration’), that the purpose of Centrum Bank AG was “the commercial operation of the banking operations listed below,” which included, *inter alia*, the “acceptance of external funds, including the acceptance of savings” and the “purchase and sale of securities, foreign exchange, foreign banknotes, precious metals and coins for own and third-party account.” (Exhibit E2 at 1, under heading ‘Purpose’). The Commercial Register further confirms that Centrum Bank was deleted from the Commercial Register on May 4, 2015 (*id.* at 1 under heading ‘Deletion’), “as a result of the transfer of the assets with all rights and obligations by universal succession as of May 1, 2015 by way of merger with ‘VP Bank AG’.” (*Id.* at 1, under heading ‘Remarks’.)

15. Attached hereto as **Exhibit E3** is a true and correct copy of an FMA

Confirmation, dated February 13, 2020, confirming that

- a. VP Bank AG is and at all time between January 1, 2004, and December 31, 2009, was “authorized to provide all banking services as set out in art. 3 para. 3 Banking Act and its articles of association;” (Exhibit E4 at 1); and
- b. Centrum Bank was licensed to operate as a bank at all times between January 1, 2004 and its fusion on May 1, 2015, with VP Bank AG. (*Id.*)

Executed on March 19, 2020, at New York, New York.

/s/ Jascha D. Preuss

Jascha D. Preuss